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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,245	02/21/2006	Herbert Stotkiewicz	R.304187	1304
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EXAMINER				
CHAUDRY, ATIF H				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/537,245

Applicant(s)

STOTKIEWITZ ET AL.

Examiner

ATIF H. CHAUDRY

Art Unit

3753

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06/30/08.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-14 and 17-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-14 and 17-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of the claims

Applicant's amendment as filed on 06/30/08 has been entered. The amendment cancelled claims 15 and 16, added claim 30 and amended claims 10, 17, 18, 22, and 26. Currently claims 10-14, 17-30 are pending in this application.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 10, 13, 17, 19, 21, 22, 28, 29, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blaser (US Patent 4420015) in view of Cope (US Patent 3179309).

4. Regarding claims 10 and 17, Blaser (Fig. 1-3) discloses a valve for a packaging container 1, having a cup-shaped body 10 having a rotational symmetry, a raised peripheral region (side wall) extending all the way around and the top side of which can be joined to a length of packaging material that forms an inside of the packaging container 1, and a middle region having a through passage 14 for gas embodied therein, and a valve diaphragm 20, which closes the passage 14 in the holder body 10 up to a defined overpressure in the packaging container 1 and opening the passage 14 in the event of an overpressure to form a conduit for the outflow of gas which escapes from the packaging container 1 via at least one opening 2 embodied in the length of packaging material of the packaging container 1 inside the peripheral region, wherein the holder body 10 is embodied as a rotationally symmetrical shallow body and wherein the valve diaphragm 20 is joined in captive fashion to the holder body and in the middle region having an indentation embodied in the region of the passage 14. Blaser (Fig. 2) discloses the valve diaphragm 20 in the regions joined to the holder body extending to the (peripheral region) side wall of the body but fails to disclose the valve diaphragm edges not joining the body spaced apart from the peripheral regions of the body in a striplike fashion, with two straight edges disposed opposite one another. Cope (Fig. 1-5) teaches a pressure based diaphragm check valve 23 having a striplike diaphragm 23 having two straight edges for air passage such that the distance between the straight edges forming air passage is shorter (seen more clearly in Fig. 1, 4) than the distance between the edges 23a bonded to the surface 21 which extend close to the peripheral wall 19. It would have been obvious to a person having ordinary skill in the art at the

time of the invention to have provided the valve disclosed by Blaser with straight edges for portion of diaphragm forming air passages as taught by Cope in order to facilitate air flow from the air-passage forming edges.

5. Regarding claim 30, Blaser (Fig. 1-3) discloses a valve for a packaging container 1, having a cup-shaped body 10 having a rotational symmetry, a raised peripheral region (side wall) extending all the way around and the top side of which can be joined to a length of packaging material that forms an inside of the packaging container 1, and a middle region having a through passage 14 for gas embodied therein, and a valve diaphragm 20, which closes the passage 14 in the holder body 10 up to a defined overpressure in the packaging container 1 and opening the passage 14 in the event of an overpressure to form a conduit for the outflow of gas which escapes from the packaging container 1 via at least one opening 2 embodied in the length of packaging material of the packaging container 1 inside the peripheral region, wherein the holder body 10 is embodied as a rotationally symmetrical shallow body and wherein the valve diaphragm 20 is joined in captive fashion to the holder body and in the middle region having an indentation embodied in the region of the passage 14. Blaser discloses a clamping member 30 to hold the diaphragm to the body 10 but fails to disclose the valve consisting of valve body and diaphragm only. Cope (Fig. 1-5) teaches a pressure based diaphragm check valve having a valve diaphragm 23 attached to the body of the valve by adhesive surface 23a of the diaphragm. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the

valve disclosed by Blaser with adhesive surface on valve diaphragm as taught by Cope as an alternative joining method.

6. Regarding claim 13, Blaser discloses the diaphragm 20 joined to the body 11, with the help of jaws on two opposed sides at jaws 31 and 32, with passage 14 in the middle, and a spacing formed in the middle between the opening 2 and top of diaphragm 20.

7. Regarding claims 19, 21, and 22, Blaser discloses (col 4 line 52) a raised area 16, on the top side of the holder body 10, joined to the package 1 by means of wave energy (ultrasonic welding).

8. Regarding claims 28 and 29, Blaser discloses an indentation around passage 14 but fails to disclose a numerical value of depth of indentation. It would have been obvious to a person of ordinary skill in the art at the time of invention to have used the claimed optimal depth, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d-272, 205 USPQ 215 (CCPA 1980).

9. Claim 11, 12, 14, 18, and 20 rejected under 35 U.S.C. 103(a) as being unpatentable over Blaser (US Patent 4420015) in view of Cope (US Patent 3179309) further in view of Domke (US Patent 5727881).

10. Regarding claim 11 and 12, Blaser fails to disclose a specific shape of indentation. Domke (Fig. 1, 2) teaches a pressure relief valve 10, with a diaphragm 19 and air passages 3; the valve has indentation 28, 29 in the form of intersecting circles between the diaphragm 19 and air hole 3. It would have been obvious to a person of

ordinary skill in the art at the time of invention to have used the semicircular indentation as taught by Domke in the valve disclosed by Blaser as an alternative shape of indentation. Matters (See MPEP 2144.04) relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. *In re Seid* , 161 F.2d 229, 73 USPQ 431 (CCPA 1947).

11. Regarding claim 14, Blaser discloses the diaphragm 20 joined to the body 11, with the help of jaws on two opposed sides at jaws 31 and 32, with passage 14 in the middle, and a spacing formed in the middle between the opening 2 and top of diaphragm 20.

12. Regarding claim 18, Blaser (Fig. 2) discloses the valve diaphragm 20 in the regions joined to the holder body extending to the (peripheral region) side wall of the body but fails to disclose the valve diaphragm edges not joining the body spaced apart from the peripheral regions of the body in a striplike fashion, with two straight edges disposed opposite one another. Cope (Fig. 1-5) teaches a pressure based diaphragm check valve 23 having a striplike diaphragm 23 having two straight edges such that the distance between the edges forming air passage is shorter (seen more clearly in Fig. 1, 4) than the distance between the edges 23a bonded to the surface 21 which extended close to the peripheral wall 19. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have provided the valve disclosed by Blaser with straight edges for portion of diaphragm forming air passage as taught by Cope in order to improve air flow from the air-passage forming edges.

13. Regarding claim 20, Blaser discloses (col 4, line 52) a raised area 16, on the top side of the holder body 10, joined to the package¹ by means of wave energy (ultrasonic welding).

14. Regarding claims 23-27, Blaser fails to disclose adhesive layer as method of joining valve to the body. Domke (Fig. 3) teaches an adhesive layer 16 joining the valve body 37 to a container 2. It would have been obvious to a person having ordinary skills in the art at the time of the invention to have provided the valve disclosed by Blaser with the adhesive layer as taught by Domke in order to join the valve to the body.

Response to Arguments

Applicant's arguments filed 06/30/08 have been fully considered but they are not persuasive. In response to applicant's argument that Cope and Domke are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the rectangular tape disclosed by Cope acts as a valve diaphragm and does the same function (of a pressure based check valve) as the claimed invention; similarly Domke also discloses a valve diaphragm as a pressure based check valve and mere change in location does not make it non-analogous. Claims 13 and 14 do not spell out a specific method of joining the diaphragm to the body. Blaser discloses the valve diaphragm joined to body at two semicircular edges and Cope has been used to show "incorporation" of straight edges.

Conclusion

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ATIF H. CHAUDRY whose telephone number is (571)270-3768. The examiner can normally be reached on Mon-Fri Alternate Friday off 9-5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571)272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Atif H Chaudry/
Examiner, Art Unit 3753

/John Rivell/
Primary Examiner, Art Unit 3753

9/18/2008